



BUILDING DISPUTES TRIBUNAL  
TE TARAIPIUNURA MŌ NGĀ TAUTOHE WHARE

## **BDT CODE OF CONDUCT FOR EXPERT WITNESSES**

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### **1.0 APPLICATION OF THE CODE**

- 1.1 This Code of Conduct applies to any expert witness engaged or appointed to give opinion evidence or to provide an expert report for use as evidence in Arbitration under these Rules.

### **2.0 GENERAL DUTY TO THE ARBITRAL TRIBUNAL**

- 2.1 An expert witness has an overriding duty to assist the Arbitral Tribunal impartially on matters relevant to the expert's area of expertise.
- 2.2 The expert witness is not an advocate for the Party retaining the witness.
- 2.3 The expert witness must comply with any directions or orders of the Arbitral Tribunal.

### **3.0 EVIDENCE OF THE EXPERT WITNESS**

- 3.1 In any report or statement of evidence, the expert witness must:
- (a) acknowledge that the expert witness has read this Code of Conduct and agrees to be bound by it;
  - (b) state the expert witness' qualifications and the expert witness' expertise and experience in relation to the issues the subject of the report;
  - (c) state the issues that the evidence of the expert witness addresses;
  - (d) state that the evidence is within the expert witness' area of expertise, and if applicable, the issues that fall outside of the expert witness' expertise;
  - (e) state all instructions that define the scope of the report or evidence, both original and supplementary, and whether in writing or oral;

- (f) state the facts and assumptions on which the opinions of the expert witness are based;
  - (g) state the expert witness' opinion on the issues referred to him or her based on paragraphs (a) to (f) above, and the reasons for the opinions given by the expert witness;
  - (h) specify any literature or other material used or relied on in support of the opinions expressed by the expert witness; and
  - (i) describe any examinations, tests, or other investigations on which the expert witness has relied, and give the details and qualifications of any person who carried them out.
- 3.2 If an expert witness believes that his or her evidence, or any part of it, may be incomplete or inaccurate without some qualification, that qualification must be stated in his or her evidence.
- 3.3 If an expert witness considers that his or her opinion is not a concluded opinion because of insufficient research, or data, or for any other reason, this must be stated in his or her evidence.
- 3.4 If an expert witness changes his or her opinion on a material matter after providing an expert's report to the Party engaging him or her (or that Party's Representative), the expert witness must immediately communicate the change of opinion to the Party retaining the expert (or that Party's Representative) and provide a supplementary report. The report must specify the reason or reasons why the expert's opinion has changed and must contain such of the information in paragraph 3.1 above as is relevant.

#### **4.0 DUTY TO ATTEND JOINT MEETING OF EXPERTS AND TO CONFER**

- 4.1 An expert witness must comply with any direction of the Arbitral Tribunal to:
- (a) confer with any other expert witness on the matters on which the Arbitral Tribunal directs the expert witnesses to confer in the absence of the Representatives of the Parties;
  - (b) endeavour to reach agreement on any matters at issue within the field of expertise of the expert witnesses, to narrow any points in difference between them, and to identify any remaining points of difference; and
  - (c) prepare and sign a joint statement stating the matters on which the expert witnesses agree and the matters on which they do not agree, and the reasons for their disagreement.
- 4.2 The expert witness must exercise his or her independent, professional judgment in relation to conferring with another expert witness and the preparation of a joint statement and must not act on the instructions or directions of any person to withhold or avoid agreement.